

E-999/CI-93-207 ORDER ESTABLISHING COMMENT PERIOD

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
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Chair
Commissioner
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Commissioner
Commissioner

In the Matter of an
Investigation into Standards
Regarding Long-term Wholesale
Purchased Power Under Section
712 of the Energy Policy Act of
1992

ISSUE DATE: June 17, 1993
DOCKET NO. E-999/CI-93-207
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PROCEDURAL HISTORY

On October 24, 1992, the federal Energy Policy Act of 1992 (the Energy Act) was signed into law. This comprehensive national energy legislation may profoundly affect the wholesale electric power market and retail electric utility operations and regulation.

On May 27, 1993, the Commission met to consider the issues related to wholesale purchased power raised by the passage of the Energy Act.

FINDINGS AND CONCLUSIONS

I. The Energy Policy Act of 1992

Section 712 of the Energy Act requires state regulatory commissions to consider four standards related to long-term wholesale purchased power. By October 23, 1993, each regulatory commission must determine whether it is appropriate to implement the standards in its respective state. Section 712 of the Energy Act codifies the four standards at amended Section 111 of the Public Utility Regulatory Policies Act (PURPA).

Under Section 712, state commissions must perform a general evaluation of, consider, and determine whether to implement standards regarding:

1. The potential for increases or decreases in the cost of capital for utilities, and any related effects on retail rates, that may result from the utility purchasing long-term wholesale power supplies instead of constructing new generating facilities;
2. Whether the use by EWGs of capital structures which employ a higher proportion of debt than the capital structures of utilities threatens reliability or gives EWGs an unfair competitive advantage over utilities;
3. Whether to implement procedures for the advance approval or disapproval of utility purchases of particular long-term wholesale power supplies; and
4. Whether to require as a condition for approval of utility purchases of power reasonable assurances of fuel supply adequacy.

Under Section 714 of the Energy Act, state commissions are given broad authority to examine the books and records of electric utilities and EWGs. This section was intended to ensure that state commissions have the necessary authority to implement the Section 712 standards, should the commissions choose to adopt them.

II. Commission Action

PURPA contains certain requirements which are applicable for regulatory commissions considering implementation of the four standards. The consideration of the standards must take place with public notice and hearing. Determinations regarding the adoption of the standards must be in writing, must be based upon findings included in such determinations and upon the evidence presented at the hearings, and must be available to the public.

In order to reach a determination regarding the adoption of the four standards by October 23, 1993, the Commission will at this time issue a notice soliciting comments from all interested parties. The Commission will consider the comments submitted and will conduct a hearing regarding the four standards. After the comment period and hearing, the Commission will determine if it is in the public interest to adopt one or more of the four standards. This determination will take place on or before October 23, 1993. If the Commission adopts any or all of the standards, the Commission will at a future date determine the best method of implementing the adopted standards. Rulemaking, case by case consideration in resource planning dockets, or general rate cases are possible means of implementing the standards, should the Commission adopt them.

ORDER

1. On or before July 30, 1993, interested parties shall file comments regarding the advisability of adopting any or all of the four standards listed in Section 712 of the Energy Policy Act of 1992. Commenting parties are encouraged to address (but are not limited to) the questions listed in Attachment A to this Order.
2. Parties filing reply comments must submit them on or before August 31, 1993.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

ATTACHMENT A

Questions Relating to Standard #1: The potential for increases or decreases in the cost of capital for utilities, and any related effects on retail rates, that may result from the utility purchasing long-term wholesale power supplies instead of constructing new generating facilities.

- 1) What specific types of financial, business, operational, or other risks are associated with a utility's use of long-term purchase power contracts in general and from EWGs in particular?
- 2) What specific types of financial, business, operational, or other risks are reduced or eliminated as a result of a utility's use of long-term purchase power contracts instead of constructing its own generating facilities?
- 3) How, if at all, do these risk factors associated with long-term power purchases affect the cost of capital to, and/or retail rates of, public utilities? Can the effects be quantified?
- 4) Does the effect on the cost of capital and rates depend on how heavily the utility relies on purchased power relative to owning capacity? What other factors may influence the degree to which the utility's cost of capital and rates may be affected?
- 5) Should long-term power purchases be considered as a debt-like equivalent,

increasing the utility's financial leverage? If so, should the Commission make adjustments to the utility's capital structure and cost of capital for ratemaking purposes to account for this?

6) To the extent that long-term power purchases increase a public utility's financial risk, can any of these risks be reduced or avoided through properly structured contracts?

7) If the Commission determines that long-term power purchases have the potential to increase or decrease a utility's cost of capital and retail rates, should the Commission proceed to develop standards to incorporate such effects into its regulatory decisions? What general types of policies or standards should be considered?

Questions Relating to Standard #2: Whether the use by EWGs of capital structures which employ a higher proportion of debt than the capital structures of utilities threatens reliability or gives EWGs an unfair competitive advantage over utilities.

8) Do EWGs and other suppliers of long-term purchase power employ higher debt leverage than electric utilities? What differences between utilities and EWGs may account for the use of different financial structures?

9) Why and how could the use

of a more leveraged capital structure by a long-term wholesale power supplier threaten the reliability of the purchasing utility?

- 10) If operational reliability may be affected by long-term power purchases, can the utility reduce or avoid the potential effects, and isolate its customers from any adverse consequences, through properly structured contracts?
- 11) If the Commission determines that the use of highly leveraged capital structures by EWGs may threaten utility reliability, should the Commission proceed to develop standards to incorporate such effects into its regulatory decisions? What general types of policies or standards should be considered?
- 12) Why and how could the use of a more leveraged capital structure by a long-term wholesale power supplier give that supplier a competitive advantage over electric utilities?
- 13) If the Commission determines that the use of highly leveraged capital structures by EWGs may give EWGs a competitive advantage over utilities, should the Commission proceed to develop standards to incorporate such effects into its

regulatory decisions?
What general types of
policies or standards
should be considered?

Questions Related to Standard #3: Whether to implement
procedures for the advance approval or disapproval of utility
purchases of particular long-term wholesale power supplies.

- 14) If the Commission determines that use of long-term wholesale power purchases may adversely affect utilities' cost of capital, customer rates, and/or reliability of electricity supply, should the Commission consider exercising greater oversight of power purchase contracts than it does now?
- 15) Are there reasons other than those listed in the previous question why the Commission should consider exercising greater oversight with respect to purchase power contracts?
- 16) Does the appropriate level and type of any Commission review depend on the size of the power purchase relative to the utility's overall rate based capacity? Are there other factors which should affect the level of review?
- 17) Should purchases from qualifying facilities (QFs) under PURPA be included in any review procedures the Commission might consider?
- 18) If greater Commission oversight is warranted, should the Commission

proceed to develop standards requiring that each long-term wholesale power supply contract be approved in advance? Are there alternative review procedures and standards that should be considered instead?

Questions Relating to Standard #4: Whether to require as a condition for approval of utility purchases of power reasonable assurances of fuel supply adequacy.

19) If the Commission determines to implement procedures for approving long-term power contracts by utilities, should demonstration of reasonable assurances of fuel supply adequacy by the EWG or other supplier be a condition for approval?

20) What other conditions for approval of long-term power purchases should the Commission consider?

Questions Relating to the Standards in General:

21) Would implementation of any of the standards affect pending or upcoming Commission proceedings and dockets? Please identify the kinds of proceedings and how they might be affected.

22) Would implementation of any of the standards require changes to Commission rules? Please identify the rules and the general nature of the changes needed.

23) Would implementation of any of the standards

require changes to Minnesota statutes? Please identify the statutes and the general nature of the changes needed.

24) Please provide any relevant information you may have on the actions taken by other state regulatory commissions to comply with section 712 requirements.

25) Please provide any additional procedural and substantive comments or relevant information that you believe will aid the Commission in making its determinations under section 712 of the Act.

26) In summary, should the Commission implement standards regarding long-term wholesale purchased power under Section 712 of the Act? For each standard, please state whether or not it should be implemented and provide a summary of the reasoning supporting your recommendation. Please relate your recommendation and reasoning to the information you have provided in response to the questions set out above.

27) With respect to each standard which you recommend that the Commission implement, please suggest appropriate procedures and time lines for such implementation.